

# EXHIBIT 1

## **COOPERATION AND JOINT PROSECUTION AGREEMENT:**

The following Cooperation and Joint Prosecution Agreement (this “Agreement”) is entered into between Class Counsel for the Consumer Plaintiffs (“Class Counsel”) in the case captioned *In re Google Play Consumer Antitrust Litigation*, No. 20-cv-05761-JD (N.D. Cal.) (the “Consumer Class Action”) and the Attorneys General of the States<sup>1</sup> (“Plaintiff States”) included in the case captioned *State of Utah et. al. v. Google LLC et. al.*, No. 21-cv-05227-JD (the “State AG Action”) (collectively “the Parties”). The State AG Action and Consumer Class Action are among those consolidated for trial purposes in *In re Google Play Store Antitrust Litigation*, No. 3:21-md-02981 (the “MDL,” and all above actions, collectively, the “Litigation”).

### **I. COLLABORATION AND JOINT PROSECUTION**

Parties agree to jointly and cooperatively conduct the Litigation to the maximum extent feasible, consistent with the obligations of the Parties to their respective clients, including fact discovery and expert testimony, depositions, document review, pre-trial litigation, *in limine* motions, trial, settlement, and distribution of proceeds.

### **II. CLASS CERTIFICATION IN THE CIVIL PLAINTIFFS’ ACTION**

In their operative complaint (the Consolidated First Amended Class Action Complaint, ECF No. 197), Class Counsel has brought claims (a) on behalf of a nationwide class of consumers under federal law; (b) on behalf of a nationwide class of consumers under California law; and (c) alternatively, under California law, on behalf of consumers that made purchases in those states that permit indirect purchaser standing—otherwise known as “repealer states.” In the absence of the Attorneys’ General *parens patriae* actions, Class Counsel would move to certify each of the foregoing classes pursuant to Federal Rule of Civil Procedure 23.

In their operative complaint (ECF No. 188), the Plaintiff States assert, among others, claims (a) on behalf of consumers in the Covered States under federal law in connection with their *parens patriae* authority; and (b) on behalf of consumers under specific state *parens patriae* authority (hereinafter “Covered Claims”).<sup>2</sup>

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<sup>1</sup> Those States, commonwealths, and districts include Utah, New York, North Carolina, Tennessee, Arizona, Colorado, Iowa, Nebraska, Alaska, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Idaho, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Virginia, Vermont, Washington, and West Virginia (collectively, the “Covered States”).

<sup>2</sup> “Covered Claims” as used in this agreement only includes claims brought pursuant to *parens patriae* authority. It does not include any other claims brought under the independent enforcement authority of the Attorneys General, such as for injunctive relief or penalties, to the extent provided for under state or federal law.

For Class Counsel and the Plaintiff States to jointly prosecute these actions in the best interests of consumers nationwide and in their respective states, and in reliance on the terms of this Agreement, the Parties hereby agree, as follows:

- Class Counsel will not make a procedural motion for class certification of a class or classes that includes consumers included in the Covered Claims;
- Class Counsel will move for class certification pursuant to Federal Rule of Civil Procedure 23 to pursue class claims under federal and/or state law on behalf of consumers in states where no Plaintiff State has asserted *parens patriae* claims (those class claims are “Non-Covered Claims”). The Attorneys General will not oppose Class Counsel seeking class certification over Non-Covered Claims;
- Notwithstanding the foregoing, the Parties will jointly pursue the Non-Covered and Covered Claims, and seek all monetary and non-monetary recoveries available to all such consumers including, specifically, any damages, money, restitution or any other relief for the benefit of and/or distribution or allocation to such consumers;
- No Plaintiff State will oppose class certification for consumers in any Covered State, as to which the Court rules, in the Litigation alone, that the respective Plaintiff State lacks *parens patriae* authority to pursue claims on behalf of its resident consumers;
- Class Counsel and the Plaintiff States intend for this agreement to continue, even if Covered Claims are amended to include additional states. If additional states join the State AG Action, it is the intention of the parties to have those states join in this Agreement, and Plaintiff States will use best efforts to accomplish this.; and
- Should any State dismiss its Covered Claims without prejudice, Class Counsel may, in their sole discretion, move to certify a class including claims from that state. In the event a class is certified, such claims shall be treated as Non-Covered Claims for purposes of this agreement. In the event Class Counsel do not move to certify a class including claims from that state, such claims will continue to be considered Covered Claims for purposes of this Agreement.
- To the extent the list of Covered Claims or Non-Covered Claims changes at any point in the litigation, the Parties to this agreement agree to meet and confer in good faith to establish the correct list of Covered Claims and Non-Covered Claims, respectively, provided, however, that any States that may join this litigation but do not become signatories to this Agreement shall be considered to assert Non-Covered Claims and will not be entitled to shared work product.

### **III. SETTLEMENT NEGOTIATIONS AND DISCUSSIONS**

The Parties wish to coordinate their conduct to the maximum extent possible regarding settlement or resolution of consumers' claims. To that end, the Parties agree they will make best efforts to jointly engage in settlement activity, including formal and informal discussions, conferences, and mediations; they will be open and candid with each other about settlement goals and discussions; and they will work cooperatively and jointly file where reasonable any pleading, motion or other court filing necessary to effectuate preliminary and/or final resolution of settlement for the benefit of consumers' claims, nationally or otherwise. The Parties agree to inform each other of serious progress on potential settlement of either the Covered Claims or Non-Covered Claims as a whole.

The Parties expressly recognize that each of them owe duties to their own respective clients. Nothing in this agreement changes or otherwise alters the fact that Class Counsel owe a fiduciary duty to their clients and the class. Similarly, nothing contained herein is intended to alter or limit the prosecutorial or litigation discretion of the Plaintiff States' respective Attorneys General with respect to settlement.

The Parties understand that compromise of the Non-Covered Claims on a class-wide basis requires a hearing and court approval pursuant to Federal Rule of Civil Procedure 23, and that compromise of the Covered Claims requires a hearing and court approval under the Clayton Act, and that both Parties may be heard at both hearings.

### **IV. ATTORNEYS' FEES BY SETTLEMENT, JUDGMENT, OR VERDICT**

In light of Class Counsel's and the Plaintiff States' agreement to jointly prosecute claims on behalf of their resident consumers and putative class members, respectively, and in acknowledgement of Class Counsel's significant contribution to date and their continued work to prosecute the claims they have asserted which has significant benefits for the Covered Claims and for residents of the Covered States, the Parties to this agreement set forth in advance how the Parties will seek attorneys' fees in the event of a settlement, judgment, or verdict with respect to Covered Claims and/or Non-Covered Claims.

- In addition to an application against any fund created by resolution of the Non-Covered Claims, Class Counsel may make an application to the Court for an award of attorneys' fees and reimbursement of litigation expenses from any recovery created by resolution of the Covered Claims, whether by settlement, verdict or judgment.
- Such application will be based on Ninth Circuit jurisprudence governing the award of attorneys' fees in common fund and class action litigation, which includes the possibility of a percentage-based fee award with a lodestar cross-check. Plaintiff States do not take the position that a pure lodestar-based fee award would be appropriate in this case.
- Class Counsel may make such application whether any class is or is not certified as to Non-Covered Claims, including for work following such order (provided such work is done while Class Counsel still represents clients with live claims in the case).

- The Parties will meet and confer with each other prior to submission of their respective applications.
- Class Counsel and the Plaintiff States agree that they will not collectively seek more in attorneys' fees against any recovery for Covered Claims than they would otherwise be entitled to under relevant Ninth Circuit authority for class action litigation. In other words, consumers in Covered States will not pay more in fees than they would have pursuant to a single common fund application under Ninth Circuit law.
- Accordingly, the attorneys' fees that Class Counsel and Plaintiff States shall seek in their respective fee applications shall be based on each respective group's overall contribution to recovery for Covered Claims. Assessment of each Party's contribution will be based on traditional factors such as attorney and staff time, monetary contribution to the litigation, the degree to which work product was shared, and other relevant indicia of contribution to the overall case.
- To the extent there is a settlement, judgment, or verdict with respect to the Non-Covered Claims, Class Counsel will seek an award of attorneys' fees and reimbursement of litigation expenses from the whole of any such settlement, judgment, or verdict, including any and all monetary recovery as well as the value of any non-monetary recovery. Plaintiff States disclaim any right to seek attorneys' fees against recoveries for Non-Covered Claims. However, Class Counsel's fee request against any fund created by the resolution of Covered Claims shall take into account (i.e., be offset by) the proportional contribution of the Plaintiff States, according to the principles articulated above, to any successful resolution of the Non-Covered Claims.

## **V. DISTRIBUTION OF SETTLEMENT, JUDGMENT, OR VERDICT PROCEEDS**

To the extent permitted by law, the net proceeds of any fund or funds created by the resolution of Covered or Non-Covered Claims will be distributed to the respective consumers and class members. "Net proceeds" excludes any fees, expenses, service awards, notice costs, claims administration costs, taxes and tax preparation costs, and such other costs and expenses as may be approved by the Court. For the avoidance of doubt, with respect to the Covered States, "net proceeds" only includes funds recovered by resolution of the Covered Claims (*parens patriae* claims) on behalf of consumers. It does not include funds recovered through penalties, disgorgement, fines, or other such recoveries pursuant to powers vested in the Plaintiff States' Attorneys General solely in their capacity as law enforcement officials. In the event of a lump-sum settlement, the amount attributable to the Covered Claims will be determined by the Court at the fairness hearing required by the Clayton Act and some state laws.

Class Counsel and the Attorneys General shall work together to retain a notice provider and claims administrator to provide services related to providing notice to consumers and distributing any proceeds from a settlement, judgment, or verdict.

To the extent a dispute arises under this Agreement, the Parties will consider mediating the dispute.

This Agreement, or its substance, will be disclosed to the Court.

Dated:


By: Karma Giulianelli  
**BARTLIT BECK LLP**  
Karma M. Giulianelli, CA Bar #184175  
1801 Wewatta Street, Suite 1200  
Denver, Colorado 80202  
Telephone: (303) 592-3100  
Facsimile: (303) 592-3140  
[karma.giulianelli@bartlitbeck.com](mailto:karma.giulianelli@bartlitbeck.com)

By: Hae Sung Nam  
**KAPLAN FOX & KILSHEIMER LLP**  
Hae Sung Nam (*pro hac vice*)  
850 Third Avenue  
New York, NY 10022  
Tel.: (212) 687-1980  
Fax: (212) 687-7715  
[hnam@kaplanfox.com](mailto:hnam@kaplanfox.com)

By: Nanci E. Nishimura  
**COTCHETT PITRE & MCCARTHY**  
Nanci E. Nishimura CA Bar #152621  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
[nnishimura@cpmlegal.com](mailto:nnishimura@cpmlegal.com)

By: George A. Zelcs  
**KOREIN TILLERY, LLC**  
George A. Zelcs (*pro hac vice*)  
205 North Michigan, Suite 1950  
Chicago, IL 60601  
Telephone: (312) 641-9750  
Facsimile: (312) 641-9751  
[gzeles@koreintillery.com](mailto:gzeles@koreintillery.com)

By:   
**PRITZKER LEVINE, LLP**  
Elizabeth C. Pritzker, CA Bar#146267  
1900 Powell Street, Suite 450  
Emeryville, CA 94608  
Telephone: (415) 805-8532  
Facsimile: (415) 366-6110  
[ecp@pritzkerlevine.com](mailto:ecp@pritzkerlevine.com)

By:   
Peggy Wedgworth (Apr 26, 2022 14:39 CDT)  
**MILBERG PHILLIPS GROSSMAN LLP**  
Peggy J. Wedgworth (*pro hac vice*)  
One Penn Plaza, Suite 1920  
New York, New York 10119  
Telephone: 212-594-5300  
Facsimile: 212-868-1229  
[pwedgworth@milberg.com](mailto:pwedgworth@milberg.com)

**FOR PLAINTIFF STATE OF UTAH:**

SEAN D. REYES, Attorney General



---

DAVID N. SONNENREICH, Deputy Attorney General  
Office of the Utah Attorney General  
160 E 300 S, 5th Floor  
Salt Lake City, Utah 84114  
Phone: 801-845-6862  
Email: [dsonnenreich@agutah.gov](mailto:dsonnenreich@agutah.gov)

**FOR PLAINTIFF STATE OF NEW YORK:**

LETITIA JAMES, Attorney General

---

ELINOR R. HOFFMANN, Chief, Antitrust Bureau  
BRYAN L. BLOOM, Assistant Attorney General  
MORGAN J. FEDER, Assistant Attorney General  
New York State Office of the Attorney General  
28 Liberty Street  
New York, NY 10005  
Phone: 212-416-8262



By: \_\_\_\_\_  
**PRITZKER LEVINE, LLP**  
Elizabeth C. Pritzker, CA Bar#146267  
1900 Powell Street, Suite 450  
Emeryville, CA 94608  
Telephone: (415) 805-8532  
Facsimile: (415) 366-6110  
[ecp@pritzkerlevine.com](mailto:ecp@pritzkerlevine.com)

By: \_\_\_\_\_  
**MILBERG PHILLIPS GROSSMAN LLP**  
Peggy J. Wedgworth (*pro hac vice*)  
One Penn Plaza, Suite 1920  
New York, New York 10119  
Telephone: 212-594-5300  
Facsimile: 212-868-1229  
[pwedgworth@milberg.com](mailto:pwedgworth@milberg.com)


**FOR PLAINTIFF STATE OF UTAH:**

SEAN D. REYES, Attorney General

\_\_\_\_\_  
DAVID N. SONNENREICH, Deputy Attorney General  
Office of the Utah Attorney General  
160 E 300 S, 5th Floor  
Salt Lake City, Utah 84114  
Phone: 801-845-6862  
Email: [dsonnenreich@agutah.gov](mailto:dsonnenreich@agutah.gov)

**FOR PLAINTIFF STATE OF NEW YORK:**

LETITIA JAMES, Attorney General

  
\_\_\_\_\_  
ELINOR R. HOFFMANN, Chief, Antitrust Bureau  
BRYAN L. BLOOM, Assistant Attorney General  
MORGAN J. FEDER, Assistant Attorney General  
New York State Office of the Attorney General  
28 Liberty Street  
New York, NY 10005  
Phone: 212-416-8262  
Email: [Elinor.Hoffmann@ag.ny.gov](mailto:Elinor.Hoffmann@ag.ny.gov)  
[Bryan.Bloom@ag.ny.gov](mailto:Bryan.Bloom@ag.ny.gov)  
[Morgan.Feder@ag.ny.gov](mailto:Morgan.Feder@ag.ny.gov)



**FOR PLAINTIFF STATE OF NORTH CAROLINA:**

JOSHUA H. STEIN, Attorney General

/s/ Jessica V. Sutton  
JESSICA V. SUTTON, Special Deputy Attorney General  
W. SWAIN WOOD, First Assistant Attorney General and General Counsel  
KEVIN ANDERSON, Senior Deputy Attorney General and Director, Consumer Protection  
Division  
JONATHAN MARX, Special Deputy Attorney General  
SARAH G. BOYCE, Deputy Solicitor General  
North Carolina Department of Justice  
P.O. Box 628  
Raleigh, NC 27602  
Phone: 919-716-6000  
Email: jsutton2@ncdoj.gov

**FOR PLAINTIFF STATE OF TENNESSEE:**

HERBERT H. SLATERY III, Attorney General and Reporter

HERBERT H. SLATERY, Attorney General and Reporter  
J. DAVID MCDOWELL, Director of Antitrust, Senior Assistant Attorney General  
S. ETHAN BOWERS, Assistant Attorney General  
Tennessee Office of the Attorney General and Reporter  
P.O. Box 20207  
Nashville, TN 37202  
Phone: 615-741-8722  
Email: David.McDowell@ag.tn.gov  
Ethan.Bowers@ag.tn.gov

**FOR PLAINTIFF STATE OF ARIZONA:**

MARK BRNOVICH, Attorney General

BRUNN W. (BEAU) ROYSDEN III, Solicitor General  
MICHAEL S. CATLETT, Deputy Solicitor General  
DANA R. VOGEL, Unit Chief Counsel  
CHRISTOPHER M. SLOOT, Assistant Attorney General  
Arizona Office of the Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004  
Phone: 602-542-3725  
Email: Dana.Vogel@azag.gov

**FOR PLAINTIFF STATE OF NORTH CAROLINA:**

JOSHUA H. STEIN, Attorney General

---

JESSICA V. SUTTON, Special Deputy Attorney General  
W. SWAIN WOOD, First Assistant Attorney General and General Counsel  
KEVIN ANDERSON, Senior Deputy Attorney General and Director, Consumer Protection  
Division  
JONATHAN MARX, Special Deputy Attorney General  
SARAH G. BOYCE, Deputy Solicitor General  
North Carolina Department of Justice  
P.O. Box 628  
Raleigh, NC 27602  
Phone: 919-716-6000  
Email: jsutton2@ncdoj.gov

**FOR PLAINTIFF STATE OF TENNESSEE:**

HERBERT H. SLATERY III, Attorney General and Reporter

/s Herbert H. Slatery III

---

HERBERT H. SLATERY III, Attorney General and Reporter  
J. DAVID MCDOWELL, Deputy Attorney General  
S. ETHAN BOWERS, Assistant Attorney General  
Tennessee Office of the Attorney General and Reporter  
P.O. Box 20207  
Nashville, TN 37202  
Phone: 615-741-8722  
Email: David.McDowell@ag.tn.gov  
Ethan.Bowers@ag.tn.gov

**FOR PLAINTIFF STATE OF ARIZONA:**

MARK BRNOVICH, Attorney General

---

BRUNN W. (BEAU) ROYSDEN III, Solicitor General  
MICHAEL S. CATLETT, Deputy Solicitor General  
DANA R. VOGEL, Unit Chief Counsel  
CHRISTOPHER M. SLOOT, Assistant Attorney General  
Arizona Office of the Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004  
Phone: 602-542-3725  
Email: Dana.Vogel@azag.gov

**FOR PLAINTIFF STATE OF NORTH CAROLINA:**

JOSHUA H. STEIN, Attorney General

---

JESSICA V. SUTTON, Special Deputy Attorney General  
W. SWAIN WOOD, First Assistant Attorney General and General Counsel  
KEVIN ANDERSON, Senior Deputy Attorney General and Director, Consumer Protection  
Division  
JONATHAN MARX, Special Deputy Attorney General  
SARAH G. BOYCE, Deputy Solicitor General  
North Carolina Department of Justice  
P.O. Box 628  
Raleigh, NC 27602  
Phone: 919-716-6000  
Email: jsutton2@ncdoj.gov

**FOR PLAINTIFF STATE OF TENNESSEE:**


HERBERT H. SLATERY III, Attorney General and Reporter

---

HERBERT H. SLATERY, Attorney General and Reporter  
J. DAVID MCDOWELL, Director of Antitrust, Senior Assistant Attorney General  
S. ETHAN BOWERS, Assistant Attorney General  
Tennessee Office of the Attorney General and Reporter  
P.O. Box 20207  
Nashville, TN 37202  
Phone: 615-741-8722  
Email: David.McDowell@ag.tn.gov  
Ethan.Bowers@ag.tn.gov

**FOR PLAINTIFF STATE OF ARIZONA:**

MARK BRNOVICH, Attorney General



---

BRUNN W. (BEAU) ROYSDEN III, Solicitor General  
MICHAEL S. CATLETT, Deputy Solicitor General  
DANA R. VOGEL, Unit Chief Counsel  
CHRISTOPHER M. SLOOT, Assistant Attorney General  
Arizona Office of the Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004  
Phone: 602-542-3725  
Email: Dana.Vogel@azag.gov

**FOR PLAINTIFF STATE OF COLORADO:**

PHILIP J. WEISER, Attorney General

*/s/ Diane R. Hazel*

---

STEVEN KAUFMANN, Deputy Attorney General  
DIANE R. HAZEL, First Assistant Attorney General

Colorado Office of the Attorney General  
1300 Broadway, 7th Floor  
Denver, CO 80203  
Phone: 720-508-6000  
Email: Steve.Kaufmann@coag.gov  
Diane.Hazel@coag.gov

**FOR PLAINTIFF STATE OF IOWA:**

THOMAS J. MILLER, Attorney General

---

MAX M. MILLER, Assistant Attorney General

Office of the Attorney General of Iowa  
1305 E. Walnut St., 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Phone: 515-281-5926  
Email: Max.Miller@ag.iowa.gov

**FOR PLAINTIFF STATE OF NEBRASKA:**

DOUGLAS J. PETERSON, Attorney General

---

Philip D. Carlson, Chief, Consumer Protection Division  
Joseph M. Conrad, Assistant Attorney General  
Shereece Dendy-Sanders, Assistant Attorney General

Nebraska Attorney General's Office  
2115 State Capitol Building  
Lincoln, NE 68509  
Phone: 402-471-3840  
Email: joseph.conrad@nebraska.gov

**FOR PLAINTIFF STATE OF COLORADO:**

PHILIP J. WEISER, Attorney General

---

STEVEN KAUFMANN, Deputy Attorney General  
DIANE R. HAZEL, First Assistant Attorney General

Colorado Office of the Attorney General  
1300 Broadway, 7th Floor  
Denver, CO 80203  
Phone: 720-508-6000  
Email: Steve.Kaufmann@coag.gov  
Diane.Hazel@coag.gov

**FOR PLAINTIFF STATE OF IOWA:**

THOMAS J. MILLER, Attorney General

/s/ Max M. Miller  

---

MAX M. MILLER, Assistant Attorney General

Office of the Attorney General of Iowa  
1305 E. Walnut St., 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Phone: 515-281-5926  
Email: Max.Miller@ag.iowa.gov

**FOR PLAINTIFF STATE OF NEBRASKA:**

DOUGLAS J. PETERSON, Attorney General

---

Philip D. Carlson, Chief, Consumer Protection Division  
Joseph M. Conrad, Assistant Attorney General  
Shereece Dendy-Sanders, Assistant Attorney General

Nebraska Attorney General's Office  
2115 State Capitol Building  
Lincoln, NE 68509  
Phone: 402-471-3840  
Email: joseph.conrad@nebraska.gov

**FOR PLAINTIFF STATE OF COLORADO:**

PHILIP J. WEISER, Attorney General

---

STEVEN KAUFMANN, Deputy Attorney General  
DIANE R. HAZEL, First Assistant Attorney General

Colorado Office of the Attorney General  
1300 Broadway, 7th Floor  
Denver, CO 80203  
Phone: 720-508-6000  
Email: Steve.Kaufmann@coag.gov  
Diane.Hazel@coag.gov

**FOR PLAINTIFF STATE OF IOWA:**

THOMAS J. MILLER, Attorney General

---

MAX M. MILLER, Assistant Attorney General

Office of the Attorney General of Iowa  
1305 E. Walnut St., 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Phone: 515-281-5926  
Email: Max.Miller@ag.iowa.gov

**FOR PLAINTIFF STATE OF NEBRASKA:**

DOUGLAS J. PETERSON, Attorney General

---

*/s/ Joseph M. Conrad*  
Philip D. Carlson, Chief, Consumer Protection Division  
Joseph M. Conrad, Assistant Attorney General  
Shereece Dendy-Sanders, Assistant Attorney General

Nebraska Attorney General's Office  
2115 State Capitol Building  
Lincoln, NE 68509  
Phone: 402-471-3840  
Email: joseph.conrad@nebraska.gov

**FOR PLAINTIFF STATE OF ALASKA:**

TREG R. TAYLOR, Attorney General

*/s/ Jeff Pickett*

Jeff Pickett

Senior Assistant Attorney General

Alaska Department of Law

1031 W. 4th Avenue, Suite 200

Anchorage, AK 99501

Phone: 907-269-5100

Email: jeff.pickett@alaska.gov

**FOR PLAINTIFF STATE OF ARKANSAS:**

LESLIE RUTLEDGE, Attorney General

JOHNATHAN R. CARTER, Assistant Attorney General

Office of the Arkansas Attorney General

323 Center Street, Suite 200

Little Rock, AR 72201

Phone: 501.682.8063

Fax: 501.682.8118

Email: Johnathan.Carter@Arkansasag.gov

**FOR PLAINTIFF STATE OF CALIFORNIA:**

ROB BONTA, Attorney General

BRIAN WANG, Deputy Attorney General

PAULA BLIZZARD, Supervising Deputy Attorney General

KATHLEEN FOOTE, Senior Assistant Attorney General

Office of the Attorney General

California Department of Justice

455 Golden Gate Avenue

Suite 11000

San Francisco, CA 94102

Phone: 415-510-3487

Email: Brian.Wang@doj.ca.gov



**FOR PLAINTIFF STATE OF ALASKA:**

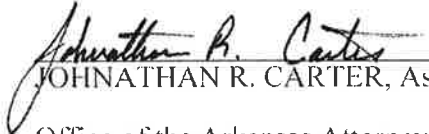
TREG R. TAYLOR, Attorney General

---

Jeff Pickett  
Senior Assistant Attorney General  
Alaska Department of Law  
1031 W. 4th Avenue, Suite 200  
Anchorage, AK 99501  
Phone: 907-269-5100  
Email: jeff.pickett@alaska.gov

**FOR PLAINTIFF STATE OF ARKANSAS:**

LESLIE RUTLEDGE, Attorney General



---

JOHNATHAN R. CARTER, Assistant Attorney General

Office of the Arkansas Attorney General  
323 Center Street, Suite 200  
Little Rock, AR 72201  
Phone: 501.682.8063  
Fax: 501.682.8118  
Email: Johnathan.Carter@Arkansasag.gov

**FOR PLAINTIFF STATE OF CALIFORNIA:**

ROB BONTA, Attorney General

---

BRIAN WANG, Deputy Attorney General  
PAULA BLIZZARD, Supervising Deputy Attorney General  
KATHLEEN FOOTE, Senior Assistant Attorney General

Office of the Attorney General  
California Department of Justice  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94102  
Phone: 415-510-3487  
Email: Brian.Wang@doj.ca.gov

**FOR PLAINTIFF STATE OF ALASKA:**

TREG R. TAYLOR, Attorney General

---

Jeff Pickett  
Senior Assistant Attorney General  
Alaska Department of Law  
1031 W. 4th Avenue, Suite 200  
Anchorage, AK 99501  
Phone: 907-269-5100  
Email: jeff.pickett@alaska.gov

**FOR PLAINTIFF STATE OF ARKANSAS:**

LESLIE RUTLEDGE, Attorney General

---

JOHNATHAN R. CARTER, Assistant Attorney General

Office of the Arkansas Attorney General  
323 Center Street, Suite 200  
Little Rock, AR 72201  
Phone: 501.682.8063  
Fax: 501.682.8118  
Email: Johnathan.Carter@Arkansasag.gov

**FOR PLAINTIFF STATE OF CALIFORNIA:**

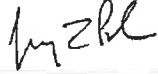
ROB BONTA, Attorney General

/s/ Brian Wang  
BRIAN WANG, Deputy Attorney General  
PAULA BLIZZARD, Supervising Deputy Attorney General  
KATHLEEN FOOTE, Senior Assistant Attorney General

Office of the Attorney General  
California Department of Justice  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, CA 94102  
Phone: 415-510-3487  
Email: Brian.Wang@doj.ca.gov

**FOR PLAINTIFF STATE OF CONNECTICUT:**

WILLIAM TONG, Attorney General



---

JEREMY PEARLMAN, Deputy Associate Attorney General  
NICOLE DEMERS, Assistant Attorney General  
JULIA SORENSEN, Assistant Attorney General

Office of the Attorney General  
165 Capitol Avenue  
Hartford, Connecticut 06106  
Phone: 860-808-5440  
Email: [jeremy.pearlman@ct.gov](mailto:jeremy.pearlman@ct.gov)

**FOR PLAINTIFF STATE OF CONNECTICUT:**

WILLIAM TONG, Attorney General

---

JEREMY PEARLMAN, Deputy Associate Attorney General  
NICOLE DEMERS, Assistant Attorney General  
JULIA SORENSEN, Assistant Attorney General

Office of the Attorney General  
165 Capitol Avenue  
Hartford, Connecticut 06106  
Phone: 860-808-5440  
Email: jeremy.pearlman@ct.gov

**FOR PLAINTIFF STATE OF DELAWARE:**

KATHLEEN JENNINGS, Attorney General

/s/ Michael A. Undorf  
MICHAEL A. UNDORF, Deputy Attorney General

Delaware Department of Justice  
820 N. French St., 5th Floor  
Wilmington, DE 19801  
Phone: 302-683-8816  
Email: michael.undorf@delaware.gov

**FOR PLAINTIFF DISTRICT OF COLUMBIA:**

KARL A. RACINE, Attorney General

---

CATHERINE A. JACKSON, Assistant Attorney General  
ELIZABETH G. ARTHUR, Assistant Attorney General  
DAVID BRUNFELD, Assistant Attorney General

Office of the Attorney General for the District of Columbia  
400 6th Street, N.W, 10th Floor  
Washington, D.C. 20001  
Phone: 202-442-9853  
Email: catherine.jackson@dc.gov

**FOR PLAINTIFF DISTRICT OF COLUMBIA:**

KARL A. RACINE, Attorney General

/s/ Kathleen Konopka

KATHLEEN KONOPKA, Deputy Attorney General

ELIZABETH G. ARTHUR, Assistant Attorney General

DAVID BRUNFELD, Assistant Attorney General

Office of the Attorney General for the District of Columbia

400 6th Street, N.W, 10th Floor

Washington, D.C. 20001

Phone: 202-724-6610

Email: [Kathleen.konopka@dc.gov](mailto:Kathleen.konopka@dc.gov)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**

**ATTORNEY GENERAL**  
**KARL A. RACINE**



**Public Advocacy Division**  
**Public Integrity Section**

February 2, 2022

**RE:** Common Interest and Joint Prosecution Agreement

The following letter is to be considered an addendum to the Joint Prosecution Agreement (the “Agreement”) entered into between Class Counsel for the Consumer Plaintiffs (“Class Counsel”) in the case captioned *In re Google Play Consumer Antitrust Litigation*, No. 20-cv-05761-JD (N.D. Cal.) (the “Consumer Class Action”) and the Office of the Attorney General for the District of Columbia (the “District”) in the case captioned *State of Utah et. al. v. Google LLC et. al.*, No. 21-cv-05227-JD (the “State AG Action”) (collectively “the Parties”).<sup>\*</sup> The Parties seek to further clarify: (1) it is the Parties’ intent that the Agreement is to be considered and treated as a Common Interest Agreement and/or an extension of any Common Interest Agreement already signed by the Parties; (2) nothing in the Agreement would prevent DC from seeking fees based on the totality of DC’s work in this case.

**FOR PLAINTIFF DISTRICT OF COLUMBIA:**

KARL A. RACINE, Attorney General

/s/ Kathleen Konopka  
KATHLEEN KONOPKA, Deputy Attorney General  
ELIZABETH G. ARTHUR, Assistant Attorney General  
DAVID BRUNFELD, Assistant Attorney General

Office of the Attorney General for the District of Columbia  
400 6th Street, N.W., 10th Floor  
Washington, D.C. 20001  
Phone: 202-724-6610  
Email: Kathleen.konopka@dc.gov

---

<sup>\*</sup> The State AG Action and Consumer Class Action are among those consolidated for trial purposes in *In re Google Play Store Antitrust Litigation*, No. 3:21-md-02981 (the “MDL,” and all above actions, collectively, the “Litigation”).

**FOR PLAINTIFF STATE OF FLORIDA:**

ASHLEY MOODY, Attorney General

/s R. Scott Palmer

R. SCOTT PALMER, Interim Co-Director, Antitrust Division  
JOHN GUARD, Chief Deputy Attorney General  
LEE ISTRAIL, Assistant Attorney General  
CHRISTOPHER KNIGHT, Assistant Attorney General  
ANDREW BUTLER, Assistant Attorney General

Office of the Attorney General, State of Florida  
PL-01 The Capitol  
Tallahassee, Florida 32399  
Phone: 850-414-3300  
Email: scott.palmer@myfloridalegal.com

**FOR PLAINTIFF STATE OF IDAHO:**

LAWRENCE G. WASDEN, Attorney General

BRETT T. DELANGE, Division Chief, Consumer Protection Division  
STEPHANE N. GUYON, Deputy Attorney General  
JOHN K. OLSON, Deputy Attorney General

Office of the Attorney General  
954 W. Jefferson St., 2<sup>nd</sup> Fl.  
P.O. Box 83720  
Boise, ID 83720-0010  
Phone: 208-334-2424  
Email: stephanie.guyon@ag.idaho.gov

**FOR PLAINTIFF STATE OF INDIANA:**

TODD ROKITA, Attorney General

SCOTT L. BARNHART, Chief Counsel and Director, Consumer Protection Division  
MATTHEW MICHALOSKI, Deputy Attorney General

Office of the Attorney General, State of Indiana  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204  
Phone: 317-232-6309  
Email: Scott.Barnhart@atg.in.gov



**FOR PLAINTIFF STATE OF FLORIDA:**

ASHLEY MOODY, Attorney General


---

R. SCOTT PALMER, Interim Co-Director, Antitrust Division  
JOHN GUARD, Chief Deputy Attorney General  
LEE ISTRAIL, Assistant Attorney General  
CHRISTOPHER KNIGHT, Assistant Attorney General  
ANDREW BUTLER, Assistant Attorney General

Office of the Attorney General, State of Florida  
PL-01 The Capitol  
Tallahassee, Florida 32399  
Phone: 850-414-3300  
Email: scott.palmer@myfloridalegal.com

**FOR PLAINTIFF STATE OF IDAHO:**

LAWRENCE G. WASDEN, Attorney General



---

BRETT T. DELANGE, Division Chief, Consumer Protection Division  
STEPHANIE N. GUYON, Deputy Attorney General  
JOHN K. OLSON, Deputy Attorney General

Office of the Attorney General  
954 W. Jefferson St., 2<sup>nd</sup> Fl.  
P.O. Box 83720  
Boise, ID 83720-0010  
Phone: 208-334-2424  
Email: stephanie.guyon@ag.idaho.gov

**FOR PLAINTIFF STATE OF INDIANA:**

TODD ROKITA, Attorney General

---

SCOTT L. BARNHART, Chief Counsel and Director, Consumer Protection Division  
MATTHEW MICHALOSKI, Deputy Attorney General

Office of the Attorney General, State of Indiana  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204  
Phone: 317-232-6309  
Email: Scott.Barnhart@atg.in.gov

**FOR PLAINTIFF STATE OF FLORIDA:**

ASHLEY MOODY, Attorney General

---

R. SCOTT PALMER, Interim Co-Director, Antitrust Division  
JOHN GUARD, Chief Deputy Attorney General  
LEE ISTRAIL, Assistant Attorney General  
CHRISTOPHER KNIGHT, Assistant Attorney General  
ANDREW BUTLER, Assistant Attorney General

Office of the Attorney General, State of Florida  
PL-01 The Capitol  
Tallahassee, Florida 32399  
Phone: 850-414-3300  
Email: scott.palmer@myfloridalegal.com

**FOR PLAINTIFF STATE OF IDAHO:**

LAWRENCE G. WASDEN, Attorney General

---

BRETT T. DELANGE, Division Chief, Consumer Protection Division  
STEPHANE N. GUYON, Deputy Attorney General  
JOHN K. OLSON, Deputy Attorney General

Office of the Attorney General  
954 W. Jefferson St., 2<sup>nd</sup> Fl.  
P.O. Box 83720  
Boise, ID 83720-0010  
Phone: 208-334-2424  
Email: stephanie.guyon@ag.idaho.gov

**FOR PLAINTIFF STATE OF INDIANA:**

TODD ROKITA, Attorney General

---

/s/ Scott L. Barnhart  
SCOTT L. BARNHART, Chief Counsel and Director, Consumer Protection Division  
MATTHEW MICHALOSKI, Deputy Attorney General

Office of the Attorney General, State of Indiana  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204  
Phone: 317-232-6309  
Email: Scott.Barnhart@atg.in.gov

**FOR PLAINTIFF COMMONWEALTH OF KENTUCKY:**

The following is not intended to modify the Cooperation and Joint Prosecution Agreement (“CJPA”). For that reason, any ambiguity in the following provisions shall be interpreted so as to be consistent with, and not contrary to, the CJPA:

The Commonwealth of Kentucky expressly reserves the right to challenge any attorney fee application made by Class Counsel if the fee application is inconsistent with Ninth Circuit jurisprudence.

This reservation shall not be construed to negate the provision in Section IV of the CJPA that: “Plaintiff States do not take the position that a pure lodestar-based fee award would be appropriate in this case,” provided that the phrase “pure lodestar” in that sentence means a lodestar-based fee award with no multiplier at all.

DANIEL CAMERON, Attorney General

/s/ Philip R. Heleringer

PHILIP R. HELERINGER, Deputy Executive Director of Consumer Protection  
J. CHRISTIAN LEWIS, Executive Director of Consumer Protection  
JONATHAN E. FARMER, Assistant Attorney General  
ZACHARY J RICHARDS, Assistant Attorney General

Office of the Attorney General, Commonwealth of Kentucky  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
Phone: 502-696-5647  
Email: philip.heleringer@ky.gov

**FOR PLAINTIFF COMMONWEALTH OF KENTUCKY:**

DANIEL CAMERON, Attorney General

---

PHILIP R. HELERINGER, Deputy Executive Director of Consumer Protection  
J. CHRISTIAN LEWIS, Executive Director of Consumer Protection  
JONATHAN E. FARMER, Assistant Attorney General  
ZACHARY J RICHARDS, Assistant Attorney General

Office of the Attorney General, Commonwealth of Kentucky  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
Phone: 502-696-5647  
Email: [philip.heleringer@ky.gov](mailto:philip.heleringer@ky.gov)

**FOR PLAINTIFF STATE OF LOUISIANA:**

JEFF LANDRY, Attorney General

---

s/Patrick Voelker  
PATRICK VOELKER, Assistant Attorney General, Public Protection Division

Office of the Attorney General  
PO Box: 94005  
1885 North 3<sup>rd</sup> Street  
Baton Rouge, LA 70804-9005  
Phone: (225) 326-6458  
[voelkerp@ag.louisiana.gov](mailto:voelkerp@ag.louisiana.gov)

**FOR PLAINTIFF STATE OF MARYLAND:**

BRIAN E. FROSH, Attorney General

---

Schonette J. Walker  
Assistant Attorney General  
Chief, Antitrust Division  
[swalker@oag.state.md.us](mailto:swalker@oag.state.md.us)  
Gary Honick  
Assistant Attorney General  
Deputy Chief, Antitrust Division  
[ghonick@oag.state.md.us](mailto:ghonick@oag.state.md.us)  
200 St. Paul Place, 19th Floor  
Baltimore, MD 21202  
Phone: (410) 576-6470

**FOR PLAINTIFF COMMONWEALTH OF KENTUCKY:**

DANIEL CAMERON, Attorney General

---

PHILIP R. HELERINGER, Deputy Executive Director of Consumer Protection  
J. CHRISTIAN LEWIS, Executive Director of Consumer Protection  
JONATHAN E. FARMER, Assistant Attorney General  
ZACHARY J RICHARDS, Assistant Attorney General

Office of the Attorney General, Commonwealth of Kentucky  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
Phone: 502-696-5647  
Email: philip.heleringer@ky.gov

**FOR PLAINTIFF STATE OF LOUISIANA:**

JEFF LANDRY, Attorney General

---

PATRICK VOELKER, Assistant Attorney General, Public Protection Division

Office of the Attorney General  
PO Box: 94005  
1885 North 3<sup>rd</sup> Street  
Baton Rouge, LA 70804-9005  
Phone: (225) 326-6458  
[voelkerp@ag.louisiana.gov](mailto:voelkerp@ag.louisiana.gov)

**FOR PLAINTIFF STATE OF MARYLAND:**

BRIAN E. FROSH, Attorney General  
*/s/ Schonette J. Walker*

---

Schonette J. Walker  
Assistant Attorney General  
Chief, Antitrust Division  
[swalker@oag.state.md.us](mailto:swalker@oag.state.md.us)  
Gary Honick  
Assistant Attorney General  
Deputy Chief, Antitrust Division  
[ghonick@oag.state.md.us](mailto:ghonick@oag.state.md.us)  
200 St. Paul Place, 19th Floor  
Baltimore, MD 21202  
Phone: (410) 576-6470

**FOR PLAINTIFF COMMONWEALTH OF MASSACHUSETTS**

MAURA HEALY, Attorney General

/s/  
WILLIAM T. MATLACK, Assistant Attorney General, Chief, Antitrust Division

Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Fl.  
Boston, MA 02108  
Phone: 617-963-2414  
Email: William.Matlack@mass.gov

**FOR PLAINTIFF STATE OF MINNESOTA:**

KEITH ELLISON, Attorney General

JUSTIN MOOR, Assistant Attorney General

Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2130  
Phone: 651-757-1060  
Email: justin.moor@ag.state.mn.us

**FOR PLAINTIFF STATE OF MISSISSIPPI:**

LYNN FITCH, Attorney General

HART MARTIN, Assistant Attorney General, Consumer Protection Division

Mississippi Attorney General's Office  
Post Office Box 220  
Jackson, Mississippi 39205  
Phone: 601-359-4223  
Fax: 601-359-4231  
Email: Hart.martin@ago.ms.gov

**FOR PLAINTIFF COMMONWEALTH OF MASSACHUSETTS**

MAURA HEALY, Attorney General

---

WILLIAM T. MATLACK, Assistant Attorney General, Chief, Antitrust Division

Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Fl.  
Boston, MA 02108  
Phone: 617-963-2414  
Email: William.Matlack@mass.gov

**FOR PLAINTIFF STATE OF MINNESOTA:**

KEITH ELLISON, Attorney General

---

/s/ Justin Moor  
JUSTIN MOOR, Assistant Attorney General

Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2130  
Phone: 651-757-1060  
Email: justin.moor@ag.state.mn.us

**FOR PLAINTIFF STATE OF MISSISSIPPI:**

LYNN FITCH, Attorney General

---

HART MARTIN, Assistant Attorney General, Consumer Protection Division

Mississippi Attorney General's Office  
Post Office Box 220  
Jackson, Mississippi 39205  
Phone: 601-359-4223  
Fax: 601-359-4231  
Email: Hart.martin@ago.ms.gov



**FOR PLAINTIFF COMMONWEALTH OF MASSACHUSETTS**

MAURA HEALY, Attorney General

---

WILLIAM T. MATLACK, Assistant Attorney General, Chief, Antitrust Division

Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Fl.  
Boston, MA 02108  
Phone: 617-963-2414  
Email: William.Matlack@mass.gov

**FOR PLAINTIFF STATE OF MINNESOTA:**

KEITH ELLISON, Attorney General

---

JUSTIN MOOR, Assistant Attorney General

Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2130  
Phone: 651-757-1060  
Email: justin.moor@ag.state.mn.us

**FOR PLAINTIFF STATE OF MISSISSIPPI:**

LYNN FITCH, Attorney General

---

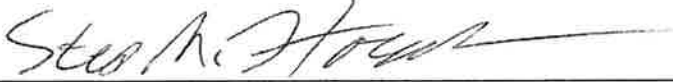
/s/ Hart Martin

HART MARTIN, Assistant Attorney General, Consumer Protection Division

Mississippi Attorney General's Office  
Post Office Box 220  
Jackson, Mississippi 39205  
Phone: 601-359-4223  
Fax: 601-359-4231  
Email: Hart.martin@ago.ms.gov

**FOR PLAINTIFF STATE OF MISSOURI:**

ERIC S. SCHMITT, Attorney General



AMY HAYWOOD, Chief Counsel, Consumer Protection  
STEPHEN HOEPLINGER, Assistant Attorney General

Missouri Attorney General's Office  
P.O. Box 899  
Jefferson City, MO 65102  
Phone: 573-571-3321  
Email: Amy.Haywood@ago.mo.gov

**FOR PLAINTIFF STATE OF MONTANA:**

AUSTIN KNUDSEN, Attorney General

---

MARK MATTIOLI, Assistant Attorney General, Chief, Office of Consumer Protection

Montana Department of Justice  
P.O. Box 200151  
Helena, MT 59620-0151  
Phone: 406-444-4500  
Fax: 406-442-1894  
Email: mmattioli@mt.gov

**FOR PLAINTIFF STATE OF NEVADA:**

AARON D. FORD, Attorney General

---

MARIE W.L. MARTIN, Senior Deputy Attorney General  
LUCAS J. TUCKER, Senior Deputy Attorney General  
MICHELLE C. NEWMAN, Senior Deputy Attorney General

Office of the Nevada Attorney General  
100 N. Carson St.  
Carson City, Nevada 89701  
Phone: 775-684-1100  
Email: MWMartin@ag.nv.gov

**FOR PLAINTIFF STATE OF MISSOURI:**

ERIC S. SCHMITT, Attorney General

---

AMY HAYWOOD, Chief Counsel, Consumer Protection  
STEPHEN HOEPLINGER, Assistant Attorney General

Missouri Attorney General's Office  
P.O. Box 899  
Jefferson City, MO 65102  
Phone: 573-571-3321  
Email: Amy.Haywood@ago.mo.gov

**FOR PLAINTIFF STATE OF MONTANA:**

AUSTIN KNUDSEN, Attorney General

*/s/ Mark Mattioli*

---

MARK MATTIOLI, Assistant Attorney General, Chief, Office of Consumer Protection

Montana Department of Justice  
P.O. Box 200151  
Helena, MT 59620-0151  
Phone: 406-444-4500  
Fax: 406-442-1894  
Email: mmattioli@mt.gov

**FOR PLAINTIFF STATE OF NEVADA:**

AARON D. FORD, Attorney General

---

MARIE W.L. MARTIN, Senior Deputy Attorney General  
LUCAS J. TUCKER, Senior Deputy Attorney General  
MICHELLE C. NEWMAN, Senior Deputy Attorney General

Office of the Nevada Attorney General  
100 N. Carson St.  
Carson City, Nevada 89701  
Phone: 775-684-1100  
Email: MWMartin@ag.nv.gov

**FOR PLAINTIFF STATE OF MISSOURI:**

ERIC S. SCHMITT, Attorney General

---

AMY HAYWOOD, Chief Counsel, Consumer Protection  
STEPHEN HOEPLINGER, Assistant Attorney General

Missouri Attorney General's Office  
P.O. Box 899  
Jefferson City, MO 65102  
Phone: 573-571-3321  
Email: Amy.Haywood@ago.mo.gov

**FOR PLAINTIFF STATE OF MONTANA:**

AUSTIN KNUDSEN, Attorney General

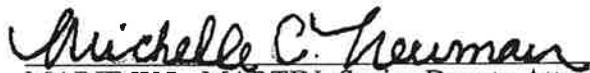
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MARK MATTIOLI, Assistant Attorney General, Chief, Office of Consumer Protection

Montana Department of Justice  
P.O. Box 200151  
Helena, MT 59620-0151  
Phone: 406-444-4500  
Fax: 406-442-1894  
Email: mmattioli@mt.gov

**FOR PLAINTIFF STATE OF NEVADA:**

AARON D. FORD, Attorney General



---

MARIE W.L. MARTIN, Senior Deputy Attorney General  
LUCAS J. TUCKER, Senior Deputy Attorney General  
MICHELLE C. NEWMAN, Senior Deputy Attorney General

Office of the Nevada Attorney General  
100 N. Carson St.  
Carson City, Nevada 89701  
Phone: 775-684-1100  
Email: MWMartin@ag.nv.gov

**FOR PLAINTIFF STATE OF NEW HAMPSHIRE:**

JOHN M. FORMELLA, Attorney General

/s/ Alexandra C. Sosnowski  
ALEXANDRA C. SOSNOWSKI, Attorney

New Hampshire Department of Justice  
Office of the Attorney General  
33 Capitol Street  
Concord, New Hampshire 03301  
Phone: (603) 271-2678  
Email: Alexandra.C.Sosnowski@doj.nh.gov

**FOR PLAINTIFF STATE OF NEW JERSEY:**

ANDREW J. BRUCK, Acting Attorney General

ISABELLA R. PITT, Deputy Attorney General

New Jersey Office of the Attorney General  
124 Halsey Street, 5<sup>th</sup> Floor  
Newark, NJ 07102  
Phone: (973) 648-7819  
Email: Isabella.Pitt@law.njoag.gov

**FOR PLAINTIFF STATE OF NEW MEXICO:**

HECTOR H. BALDERAS, Attorney General

MARK SWANSON, Assistant Attorney General  
P. CHOLLA KHOURY, Division Director, Consumer & Environmental Protection Division

New Mexico Office of the Attorney General  
408 Galisteo St.  
Santa Fe, NM 87504  
Phone: 505-717-3500  
Email: mswanson@nmag.gov

**FOR PLAINTIFF STATE OF NEW HAMPSHIRE:**

JOHN M. FORMELLA, Attorney General

---

JOHN M. FORMELLA, Attorney General  
ALEXANDRA C. SOSNOWSKI, Attorney

New Hampshire Department of Justice  
Office of the Attorney General  
33 Capitol Street  
Concord, New Hampshire 03301  
Phone: 603-271-2678  
Email: Alexandra.C.Sosnowski@doj.nh.gov

**FOR PLAINTIFF STATE OF NEW JERSEY:**

ANDREW J. BRUCK, Acting Attorney General

/s/ Isabella R. Pitt  
ISABELLA R. PITT, Deputy Attorney General  
YALE A. LEBER, Deputy Attorney General  
BRYAN S. SANCHEZ, Deputy Attorney General

New Jersey Office of the Attorney General  
124 Halsey Street, 5<sup>th</sup> Floor  
Newark, NJ 07102  
Phone: (973) 648-7819  
Email: Isabella.Pitt@law.njoag.gov

**FOR PLAINTIFF STATE OF NEW MEXICO:**

HECTOR H. BALDERAS, Attorney General

---

MARK SWANSON, Assistant Attorney General  
P. CHOLLA KHOURY, Division Director, Consumer & Environmental Protection Division

New Mexico Office of the Attorney General  
408 Galisteo St.  
Santa Fe, NM 87504  
Phone: 505-717-3500  
Email: mswanson@nmag.gov

**FOR PLAINTIFF STATE OF NEW HAMPSHIRE:**

JOHN M. FORMELLA, Attorney General

---

JOHN M. FORMELLA, Attorney General  
ALEXANDRA C. SOSNOWSKI, Attorney

New Hampshire Department of Justice  
Office of the Attorney General  
33 Capitol Street  
Concord, New Hampshire 03301  
Phone: 603-271-2678  
Email: Alexandra.C.Sosnowski@doj.nh.gov

**FOR PLAINTIFF STATE OF NEW JERSEY:**

ANDREW J. BRUCK, Acting Attorney General

---

ISABELLA R. PITT, Deputy Attorney General

New Jersey Office of the Attorney General  
124 Halsey Street, 5<sup>th</sup> Floor  
Newark, NJ 07102  
Phone: (973) 648-7819  
Email: Isabella.Pitt@law.njoag.gov

**FOR PLAINTIFF STATE OF NEW MEXICO:**

HECTOR H. BALDERAS, Attorney General

/s/ Judith E. Paquin

---

JUDITH E. PAQUIN, Assistant Attorney General  
BRIAN MCMATH, Division Director, Consumer & Environmental Protection Division

New Mexico Office of the Attorney General  
408 Galisteo St.  
Santa Fe, NM 87504  
Phone: 505-717-3500  
Email: jpaquin@nmag.gov



**FOR PLAINTIFF STATE OF NORTH DAKOTA:**

WAYNE STENEHJEM, Attorney General

/s/ Elin S. Alm

ELIN S. ALM, Assistant Attorney General, Consumer Protection and Antitrust Division

Office of Attorney General  
Gateway Professional Center  
1050 E Interstate Ave, Ste 200  
Bismarck, ND 58503-5574  
Phone: 701-328-5570  
Facsimile: 701-328-5568  
Email: ealm@nd.gov

**FOR PLAINTIFF STATE OF OKLAHOMA:**

DAWN CASH, Acting Attorney General

CALEB J. SMITH, Assistant Attorney General, Consumer Protection Unit

Office of the Oklahoma Attorney General  
313 NE 21st St  
Oklahoma City, OK 73105  
Phone: (405) 522-1014  
Email: Caleb.Smith@oag.ok.gov

**FOR PLAINTIFF STATE OF OREGON:**

ELLEN F. ROSENBLUM, Attorney General

CHERYL F. HIEMSTRA, Assistant Attorney General

TIM D. NORD, Special Counsel

Oregon Department of Justice  
1162 Court St NE  
Salem, OR 97301  
Phone: 503-934-4400  
Facsimile: 503-378-5017  
Email: Cheryl.Hiemstra@doj.state.or.us

**FOR PLAINTIFF STATE OF NORTH DAKOTA:**

WAYNE STENEHJEM, Attorney General

---

ELIN S. ALM, Assistant Attorney General, Consumer Protection and Antitrust Division

Office of Attorney General  
Gateway Professional Center  
1050 E Interstate Ave, Ste 200  
Bismarck, ND 58503-5574  
Phone: 701-328-5570  
Facsimile: 701-328-5568  
Email: ealm@nd.gov

**FOR PLAINTIFF STATE OF OKLAHOMA:**

JOHN M. O'CONNOR, Attorney General

/s/ Caleb J. Smith  
CALEB J. SMITH, Assistant Attorney General, Consumer Protection Unit

Office of the Oklahoma Attorney General  
313 NE 21st St  
Oklahoma City, OK 73105  
Phone: (405) 522-1014  
Email: Caleb.Smith@oag.ok.gov

**FOR PLAINTIFF STATE OF OREGON:**

ELLEN F. ROSENBLUM, Attorney General

---

CHERYL F. HIEMSTRA, Assistant Attorney General  
TIM D. NORD, Special Counsel

Oregon Department of Justice  
1162 Court St NE  
Salem, OR 97301  
Phone: 503-934-4400  
Facsimile: 503-378-5017  
Email: Cheryl.Hiemstra@doj.state.or.us

**FOR PLAINTIFF STATE OF NORTH DAKOTA:**

WAYNE STENEHJEM, Attorney General

---

ELIN S. ALM, Assistant Attorney General, Consumer Protection and Antitrust Division

Office of Attorney General  
Gateway Professional Center  
1050 E Interstate Ave, Ste 200  
Bismarck, ND 58503-5574  
Phone: 701-328-5570  
Facsimile: 701-328-5568  
Email: ealm@nd.gov

**FOR PLAINTIFF STATE OF OKLAHOMA:**

DAWN CASH, Acting Attorney General

---

CALEB J. SMITH, Assistant Attorney General, Consumer Protection Unit

Office of the Oklahoma Attorney General  
313 NE 21st St  
Oklahoma City, OK 73105  
Phone: (405) 522-1014  
Email: Caleb.Smith@oag.ok.gov

**FOR PLAINTIFF STATE OF OREGON:**

ELLEN F. ROSENBLUM, Attorney General\*

*s/ Timothy D. Smith*

*03.29.2022*

---

TIMOTHY D. SMITH, Senior Assistant Attorney General  
TIM D. NORD, Special Counsel

Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Phone: 503-934-4400  
Facsimile: 503-378-5017  
Email: tim.smith@doj.state.or.us

\*Any recoveries by the Oregon Attorney General pursuant to Oregon's Antitrust Law, ORS 646.705-646.836, shall remain subject to such state law provisions including approval and award of fees under ORS 646.775.

**FOR PLAINTIFF STATE OF RHODE ISLAND:**

PETER F. NERONHA, Attorney General

/s/ Stephen N. Provazza

STEPHEN N. PROVAZZA, Special Assistant Attorney General

Rhode Island Office of the Attorney General

150 South Main St.

Providence, RI 02903

Phone: 401-274-4400

Email: SProvazza@riag.ri.gov

**FOR PLAINTIFF STATE SOUTH DAKOTA:**

JASON R. RAVNSBORG, Attorney General

YVETTE K. LAFRENTZ, Assistant Attorney General, Consumer Protection Division

South Dakota Office of the Attorney General

1302 E. Hwy. 14, Suite 1

Pierre, SD 57501

Phone: 605-773-3215

Email: Yvette.Lafrentz@state.sd.us

**FOR PLAINTIFF STATE TEXAS:**

KEN PAXTON, Attorney General

JAMES LLOYD, Chief, Antitrust Division

BRET FULKERSON, Deputy Chief, Antitrust Division

NICK GRIMMER, Assistant Attorney General, Antitrust Division

Office of the Attorney General

300 W. 15th Street

Austin, Texas 78701

Phone: 512-463-1579

Email: james.lloyd@oag.texas.gov

bret.fulkerson@oag.texas.gov

nick.grimmer@oag.texas.gov

**FOR PLAINTIFF STATE OF RHODE ISLAND:**  
PETER F. NERONHA, Attorney General

---

STEPHEN N. PROVAZZA, Assistant Attorney General

Rhode Island Office of the Attorney General  
150 South Main St.  
Providence, RI 02903  
Phone: 401-274-4400  
Email: SProvazza@riag.ri.gov]]

**FOR PLAINTIFF STATE SOUTH DAKOTA:**

JASON R. RAVNSBORG, Attorney General

*/s/ Yvette K. Lafrentz*

---

YVETTE K. LAFRENTZ, Assistant Attorney General, Consumer Protection Division

South Dakota Office of the Attorney General  
1302 E. Hwy. 14, Suite 1  
Pierre, SD 57501  
Phone: 605-773-3215  
Email: Yvette.Lafrentz@state.sd.us

**FOR PLAINTIFF STATE TEXAS:**

KEN PAXTON, Attorney General

---

JAMES LLOYD, Chief, Antitrust Division  
BRET FULKERSON, Deputy Chief, Antitrust Division  
NICK GRIMMER, Assistant Attorney General, Antitrust Division

Office of the Attorney General  
300 W. 15th Street  
Austin, Texas 78701  
Phone: 512-463-1579  
Email: james.lloyd@oag.texas.gov  
bret.fulkerson@oag.texas.gov  
nick.grimmer@oag.texas.gov

**FOR PLAINTIFF STATE OF RHODE ISLAND:**

PETER F. NERONHA, Attorney General

---

STEPHEN N. PROVAZZA, Assistant Attorney General

Rhode Island Office of the Attorney General  
150 South Main St.  
Providence, RI 02903  
Phone: 401-274-4400  
Email: SProvazza@riag.ri.gov]]

**FOR PLAINTIFF STATE SOUTH DAKOTA:**

JASON R. RAVNSBORG, Attorney General

---

YVETTE K. LAFRENTZ, Assistant Attorney General, Consumer Protection Division

South Dakota Office of the Attorney General  
1302 E. Hwy. 14, Suite 1  
Pierre, SD 57501  
Phone: 605-773-3215  
Email: Yvette.Lafrentz@state.sd.us

**FOR PLAINTIFF STATE TEXAS:**

KEN PAXTON, Attorney General



---

JAMES LLOYD, Chief, Antitrust Division  
BRET FULKERSON, Deputy Chief, Antitrust Division  
NICK GRIMMER, Assistant Attorney General, Antitrust Division

Office of the Attorney General  
300 W. 15th Street  
Austin, Texas 78701  
Phone: 512-463-1579  
Email: james.lloyd@oag.texas.gov  
bret.fulkerson@oag.texas.gov  
nick.grimmer@oag.texas.gov

**FOR PLAINTIFF STATE OF VERMONT:**

THOMAS J. DONOVAN JR, Attorney General

/s/ Ryan Kriger

RYAN KRIGER, Assistant Attorney General

Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
Phone: 802-828-3170  
Email: ryan.kriger@vermont.gov

**FOR PLAINTIFF COMMONWEALTH OF VIRGINIA:**

MARK R. HERRING, Attorney General

SARAH OXENHAM ALLEN, Assistant Attorney General  
TYLER T. HENRY, Assistant Attorney General

Office of the Attorney General for Virginia  
202 North 9th Street  
Richmond, VA 23219  
Phone: 804-786-6557  
Email: SOAllen@oag.state.va.us

**FOR PLAINTIFF STATE OF WASHINGTON:**

ROBERT W. FERGUSON, Attorney General

NATHANIEL M. HOPKIN, Assistant Attorney General, Antitrust Division  
AMY N.L. HANSON, Assistant Attorney General

Washington State Office of the Attorney General  
800 Fifth Ave., Suite 2000  
Seattle, WA 98104  
Phone: (206) 464-7030  
Email: Nathaniel.Hopkin@atg.wa.gov

**FOR PLAINTIFF STATE OF VERMONT:**

THOMAS J. DONOVAN JR, Attorney General

---

RYAN KRIGER, Assistant Attorney General

Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
Phone: 802-828-3170  
Email: ryan.kriger@vermont.gov

**FOR PLAINTIFF COMMONWEALTH OF VIRGINIA:**

MARK R. HERRING, Attorney General

*/s/ Tyler T. Henry*

---

SARAH OXENHAM ALLEN, Assistant Attorney General  
TYLER T. HENRY, Assistant Attorney General

Office of the Attorney General for Virginia  
202 North 9th Street  
Richmond, VA 23219  
Phone: 804-786-6557  
Email: SOAllen@oag.state.va.us

**FOR PLAINTIFF STATE OF WASHINGTON:**

ROBERT W. FERGUSON, Attorney General

---

NATHANIEL M. HOPKIN, Assistant Attorney General, Antitrust Division  
AMY N.L. HANSON, Assistant Attorney General

Washington State Office of the Attorney General  
800 Fifth Ave., Suite 2000  
Seattle, WA 98104  
Phone: (206) 464-7030  
Email: Nathaniel.Hopkin@atg.wa.gov



**FOR PLAINTIFF STATE OF VERMONT:**

THOMAS J. DONOVAN JR, Attorney General

---

RYAN KRIGER, Assistant Attorney General

Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
Phone: 802-828-3170  
Email: ryan.kriger@vermont.gov

**FOR PLAINTIFF COMMONWEALTH OF VIRGINIA:**

MARK R. HERRING, Attorney General

---

SARAH OXENHAM ALLEN, Assistant Attorney General  
TYLER T. HENRY, Assistant Attorney General

Office of the Attorney General for Virginia  
202 North 9th Street  
Richmond, VA 23219  
Phone: 804-786-6557  
Email: SOAllen@oag.state.va.us

**FOR PLAINTIFF STATE OF WASHINGTON:**

ROBERT W. FERGUSON, Attorney General

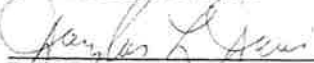
/s/ Nathaniel M. Hopkin

NATHANIEL M. HOPKIN, Assistant Attorney General, Antitrust Division  
AMY N.L. HANSON, Assistant Attorney General

Washington State Office of the Attorney General  
800 Fifth Ave., Suite 2000  
Seattle, WA 98104  
Phone: (206) 464-7030  
Email: Nathaniel.Hopkin@atg.wa.gov

**FOR PLAINTIFF STATE OF WEST VIRGINIA:**

PATRICK MORRISEY, Attorney General



DOUGLAS L. DAVIS, Senior Assistant Attorney General  
TANYA L. GODFEY, Assistant Attorney General

Office of the West Virginia Attorney General  
1900 Kanawha Boulevard East  
Capitol Complex, Building 6, Suite 401 P.O. Box 1789  
Charleston, WV 25326  
Phone: 304-558-8986  
Email: douglas.l.davis@wvago.gov

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